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The National Credit Act And Zero Registration Threshold



To register as a credit provider or not? An overview of the new zero registration threshold applicable to credit providers.

The new zero registration threshold applicable to credit providers became effective on 11 November 2016 (see *Government Gazette Notice 39981* of 11 May 2016). The question arises as to whether or not every person involved in money lending should register with the National Credit Regulator (NCR) as a credit provider. Consideration must be given to section 40 of the National Credit Act (NCA), which provides for the registration of a credit provider where the total principal debt due exceeds the threshold, as determined by the Minister of Trade and Industry. No deviation from this threshold shall be allowed, despite any agreement to the contrary between the credit provider and credit consumer.

Prior to the amendment of the NCA in 2015, section 40 imposed two registration requirements on persons involved in lending money (or other credit activities), namely:

- When the person had at least 100 credit agreements; or
- When the principal debt owed to him/her under all of his/her current credit agreements exceeded R500 000,00.

Subsequently, the amendment of the NCA (see the National Credit Amendment Act) saw the removal of the first requirement and, more recently, a reduction by the Minister of the second requirement's threshold from R500 000,00 to R0,00 (nil).

As a result of the above, the following factors, amongst others, should be considered when deciding whether or not to register:

- Does the transaction fall within the ambit of the NCA?
- Do any of the exceptions, as set out in the NCA, apply to the transaction? For example, the NCA is not applicable when the credit consumer is a juristic person whose asset value or annual turnover equals or exceeds the threshold (currently R1 000 000,00), as determined by the Minister.
- Are the parties to the credit agreement dealing at arm's length, i.e. are the parties independent and on equal footing? The NCA clearly sets out instances where parties are deemed to not be dealing at arm's length. (One such example is a credit agreement concluded between a juristic person, as credit provider, and a person who has a controlling interest in that juristic person, as credit consumer.)
- Is the transaction concluded, or will it have effect, within the Republic?
- Does the transaction amount to an *incidental credit agreement*? Notably, it is not necessary for a person or business to register as a credit provider when he/ it is a party to an *incidental credit agreement*.

Consequently, failure to register as a credit provider will result in the credit agreement being declared unlawful by the courts and the unregistered credit provider will have limited legal recourse against the credit consumer. For instance, the unregistered credit provider will no longer be able to rely on the credit agreement and the terms therein to claim repayment of the credit amount from the credit consumer and would instead have to rely on a claim for unjustified enrichment to prevent the credit consumer from retaining the money to which he/she is no longer entitled. **SERR Synergy** assist businesses to *comply with provisions of the National Credit Act (NCA) and the Consumer Protection Act (CPA)*. About the Author: Montenique Hayward is a BCom (Law) [2011], LLB [2013] and LLM [2017] graduate from the University of Pretoria. During her LLM studies, she specialised in Consumer Protection and was, subsequently, awarded the JUTA award for the highest mark obtained at the end of her LLM. She was also admitted as an attorney of the High Court in 2015 and practiced as such before joining our team in 2017 as a Corporate Legal Advisor.

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